

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

STATE OF TEXAS et al.,

Plaintiffs,

v.

RISING EAGLE CAPITAL GROUP LLC et  
al.,

Defendants

CASE NO. 4:20-cv-02021

**PLAINTIFF STATES' RESPONSE TO ATTORNEY ANTHONY G. FRANQUI'S  
MOTION FOR LEAVE TO WITHDRAW AS COUNSEL**

Plaintiff States of Arkansas, Indiana, Michigan, North Carolina, North Dakota, Ohio, and Texas (collectively "Plaintiff States") respectfully submit to the Court this response to attorney Anthony G. Franqui ("Counsel") Motion for Leave to Withdraw as Counsel for Defendants Health Advisors of America, Inc. ("HAA") and Michael T. Smith, Jr. ("Smith"). ECF No. 149. While the Plaintiff States recognize the reasons Counsel seeks to withdraw, the Plaintiff States are concerned that there is currently no proposed substitute counsel to represent HAA, and that without a successor attorney for HAA, a withdrawal by Counsel will lead to delays in discovery and ultimately in the trial of this matter.

Further, Plaintiffs have conferred in good faith with Counsel to obtain full discovery responses from Defendants HAA and Smith. Plaintiffs will be filing a contemporaneous

Pre-Motion Conference Letter with the Court regarding these issues. Plaintiffs have also tried to schedule a deposition with Defendant Smith for March 8, 2022 to no avail.

Therefore, the Plaintiff States respectfully request that the Court order that Defendant HAA retain new counsel no later than **March 8, 2022**. Further, Plaintiff States request that the Court order Defendant HAA to fully respond to Plaintiffs' Requests for Production no later than **March 4, 2022**.

Plaintiffs also request that the Court order Defendant Smith to fully respond to Plaintiffs' Requests for Production and Plaintiffs' First Set of Interrogatories no later than **March 4, 2022**. Finally, Plaintiffs request that the Court order Defendant Smith to sit for a deposition on **March 8, 2022**, and that the deposition be held virtually.

### **I. Procedural Background**

- 1.1 On October 30, 2020, Plaintiff States filed their Second Amended Complaint, alleging violations of the TCPA, its related rules, and various state telemarketing laws against Defendants HAA and Smith. ECF No. 56.
- 1.2 On February 3, 2021, Defendants HAA and Smith filed a Motion to Dismiss the Second Amended Complaint. ECF No. 93. On February 21, 2021, Plaintiffs filed a Response in Opposition to the Motion to Dismiss. ECF No. 101.
- 1.3 On March 10, 2021, Defendants HAA and Smith filed a Reply to the Plaintiffs' Response. ECF. No 105.
- 1.4 On September 27, 2021, the Court denied Defendants' Motion to Dismiss. ECF No. 133.

- 1.5 On November 15, 2021, Defendants HAA and Smith filed their Answers to the Second Amended Complaint. ECF Nos. 143-144.
- 1.6 On January 6, 2022, the Court entered a modified Scheduling Order that the identification of Plaintiffs' experts' reports by January 7, 2022, the Defendants expert reports due by March 11, 2022, the completion of discovery by April 8, 2022, a Dispositive Motion deadline for April 22, 2022, all other pretrial motions due by May 13, 2022, a Joint Pretrial Order due by July 1, 2022, and a Docket Call set for July 8, 2022 at 3:00 PM Central Time.

## **II. Argument**

- 2.1 It is well settled that "a corporation can appear in a court of record only by an attorney at law." *Southwest Exp. Co. Inc. v. I. C. C.*, 670 F.2d 53, 55 (5th Cir. 1982) (quoting *Flora Construction Co. v. Fireman's Fund Ins. Co.*, 307 F.2d 413, 414 (10th Cir. 1962)); *see also Kunstoplast of Am., Inc. v. Formosa Plastics Corp., USA*, 937 S.W.2d 455, 456 (Tex. 1996) ("Generally a corporation may be represented only by a licensed attorney."). Thus, when Counsel withdraws, Defendant HAA, unable to appear in court for itself, would be left entirely without representation.
- 2.2 The deadline for discovery is currently April 8, 2022. Without representation of counsel, however, Defendant HAA will be unable to respond to discovery requests.
- 2.3 Furthermore, without representation of counsel Defendant HAA will be unable to appear in this Court and participate in the litigation.

- 2.4 Defendant HAA's inability to respond to discovery or otherwise participate in litigation would cause excessive delays in discovery in this matter, making it difficult, if not impossible, to meet the Discovery Deadline of April 8, 2022. As such, Defendant HAA's lack of representation will likely result in a delay of trial of this matter.
- 2.5 As such, Plaintiff States believe the Court should order Defendant HAA to retain new counsel no later than March 8, 2022.
- 2.6 The Plaintiff States believe the Court should order Defendant HAA to fully respond to the discovery requests by March 4, 2022.
- 2.7 Further, the Plaintiff States believe the Court should order Defendant Smith to fully respond to the discovery requests no later than March 4, 2022 and sit for a deposition on March 8, 2022.

### **III. Prayer**

The Plaintiff States respectfully request that the Court order Defendant HAA to retain new counsel by March 8, 2022 and to complete the discovery requests by March 4, 2022. The Plaintiff states also respectfully request that the Court order Defendant Smith to complete the discovery requests by March 4, 2022 and sit for a deposition, to be held virtually, on March 8, 2022.

DATED: February 23, 2022

Respectfully,

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### **CERTIFICATE OF SERVICE**

I hereby certify that, on February 23, 2022, I electronically filed the foregoing document with the Clerk using the CM/ECF system, which will automatically send e-mail notification of such filing to all counsel of record. I hereby certify that, on February 23, 2022, I served the below parties via US Mail and E-Mail:

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